

REMARKS

Status of the Claims

Claims 52, 59, 66, and 72-83 are pending in the present application. Claims 52, 59, and 72-77 are allowed. In view of the following, reconsideration is respectfully requested.

Obviousness-Type Non-Statutory Double Patenting

Claims 66 and 78-83 are rejected on the ground of non-statutory obviousness-type double patenting as allegedly unpatentable over claims 1-6 of U.S. Patent No. 6,160,206 (US '206) in view of Randolph-Anderson, *et al.*, *Plant Mol. Biol.*, 1998, 38:839-859. Applicants respectfully traverse the rejection.

Although Applicants do not believe that the presently claimed invention is rendered obvious by the claim in US '206, Applicants submit herewith a terminal disclaimer in order to expedite prosecution. Applicants respectfully remind the Examiner that the filing of a terminal disclaimer to obviate a rejection based on non-statutory double patenting is not an admission of the propriety of the rejection. A terminal disclaimer simply serves the statutory function of removing the rejection of obviousness-type double patenting, and does not raise a presumption on the merits of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). Accordingly, the rejection is moot.

CONCLUSION

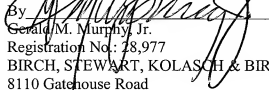
In view of the above, Applicants believe the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Linda T. Parker, Reg. No. 46,046, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 
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